Link Brown
Director-
Federal Regulatory

SBC Communications Inc.
1401 I Street, N.W.
Suite 1100
Washington, D.C. 20005
Phone 202 326-8890

Ex Parte

August 6, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop Code 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Docket No: Re: CC Docket No. 95-116

Yesterday, August 5, 1997, David Brown, Curt Hopfinger, Durward Dupre, and the undersigned met with A. Richard Metzger, Pat Donovan, Steven Teplitz, Glen Raynolds, and Blase Scinto of the Common Carrier Bureau to discuss issues in the above referenced docket.

The SBC representatives discussed various mechanisms, acceptable to SBC, for recovery of the costs of implementing long-term number portability capability;

- A federal, mandatory, uniform, end-user charge paid by customers on the basis of "elemental access lines," as SBC proposed in its comments and reply comments in this proceeding;

- New part 69 rate elements (end-user, reseller, and query-based), as proposed by Southwestern Bell Telephone Company and Pacific Bell in their recent tariff filings;

- A combination of federal and state tariff offerings comparable to those proposed by Southwestern Bell Telephone Company and Pacific Bell that permit carriers to institute new service rate elements;

- A combination of federal and state tariff offerings that permit carriers to obtain cost recovery via a new service rate element that is based upon a percentage of retail revenues reflected in a given customer's bill.

- SBC contends that the FCC has "intrastate" and "interstate" jurisdiction over number portability and that Congress has placed in its hands the authority to determine the means of cost recovery, and based upon policy considerations, it should exercise that authority. Through Section 251(e)(2) and under the 8th Circuit's recent ruling, the Commission has a "direct and unambiguous" grant of intrastate authority to determine a "competitively neutral" means of allocating number portability costs. This grant of authority is supported by the policies that the Commission cited in the First Report and Order. However, allocation without recovery--whether from carriers or from consumers--is meaningless, and the Commission's own standards for competitive neutrality cannot be met without cost recovery.

- SBC pointed out in the meeting that the Commission has been granted the statutory authority to "see the job through" by means of Section 251(e)(2), and the Eighth Circuit opinion supports the idea that the Commission has an unambiguous and direct grant of intrastate jurisdiction. In its review of the Interconnection Order in Iowa Utilities Board, et al., v. Federal Communications Commission, et al., the United States Court of Appeals for the Eighth Circuit cited Section 251(b)(2) (and Section 251(e)) as one of the provisions in the Act that grants "direct and unambiguous . . . intrastate authority" to the FCC. Iowa Utilities Board v. FCC, No. 96-3321 and consolidated cases, Slip. Op. at 108 and nn. 10, 12 (8th Cir. July 18, 1997) (emphasis added).

- As with its exercise of authority in determining the technical requirements, cost structure, and schedule for implementing LNP under Section 251(b)(2), the Commission has, therefore, a "direct and unambiguous grant of intrastate authority" over cost recovery under Section 251(e)(2).

- In addition, the policies the Commission espouses in the First Report and Order to support interim number portability cost recovery and the national rules for number portability implementation are equally applicable in this context. These include:

- Number portability has ubiquitous, "nationwide" impact; virtually all calls require the use of the system of databases and signaling systems;

- All "N-1" telecommunications carriers (ILECs, CLECs, IXCs, cellular and PCS providers) require the use of number portability infrastructure to complete calls;

- Virtually all calls of all customers in number portability areas or calls to number portability areas, intrastate and interstate, will require use of number portability infrastructure:

- In number portability areas;
- Around number portability areas;
- Interexchange calls--both interstate AND intrastate; and
- Cellular/PCS calls;
- Only the FCC has the necessary jurisdiction to regulate "all telecommunications carriers" as to number portability.
- Further , the FCC has said that all consumers—both in and out of number portability areas—will benefit from competition fostered by number portability.
- The FCC has said that it agrees with that portion of the legislative history of the 1996 Act that finds that number portability is necessary for competition ("To the extent that customers are reluctant to change service providers due to the absence of number portability, demand for services by new service providers will be depressed. This could well discourage entry by new service providers and thereby frustrate the pro-competitive goals of the 1996 Act." First Report and Order at para. 31. See also para. 2.).
- The FCC acknowledges that it "has a significant interest in promoting the nationwide availability of number portability due to its impact on interstate telecommunications . . .. based [upon] four grounds: (1) our obligation to promote an efficient and fair telecommunications system; (2) the inability to separate the impact of number portability between intrastate and interstate telecommunications; (3) the likely adverse impact deploying different number portability solutions across the country would have on the provision of interstate telecommunications services; and (4) the impact that number portability could have on the use of the numbering resource, that is, ensuring that the use of numbers is efficient and does not contribute to area code exhaust." First Report and Order at para. 32.
- Finally, the FCC has already gone far down the path of establishing uniform national rules and policies for number portability. Using the Congressional command that number portability be implemented in accordance with requirements prescribed "by the Commission," the FCC has:

- Defined the technical attributes of number portability in a manner that, within the other requirements of the First Report and Order and the Memorandum Opinion and First Order on Reconsideration, limit local exchange companies to the "local routing number" technology;

- Precluded another technology that in conjunction with LRN was demonstrated to diminish costs (if in disputed amounts);

- Defined with specificity the time within which all local exchange carriers must deploy number portability technology, thereby increasing the demand upon vendors of software and hardware, thereby driving up the market value of those items and their cost to consumers;

- Precluded the States from interfering with its planned deployment—even if the States chose to do so to diminish costs.

- The FCC should, therefore, adopt a recovery mechanism that provides expeditious recovery in order to avoid violating the FCC's own competitive neutrality principles.

- If the FCC does not act expeditiously, a carrier's ability to earn a normal return in the year costs are incurred will be precluded—huge expense will be incurred without a defined means of recovery. Delegation to the States could have the same effect.

- Failure to provide for ILECs' number portability cost recovery could damage competition by depressing market prices for competitive services. CLECs will have a share of number portability costs allocated to them and will incur comparatively small number portability costs themselves. To the extent that ILECs are hindered in their ability to recover the costs of implementing number portability, so too, will CLECs be hindered when they must price their services in competition with ILEC services that incorporate within their prices the new, implicit "number portability subsidy."

- The 1996 Act contemplates that local exchange carriers will be required to install number portability capabilities that may serve to facilitate competition, but competitive neutrality is threatened where carriers are required to expend large sums for the benefit of competitors without contemporaneous cost recovery.

To that end, if the FCC elects to assign some of the cost recovery for long term number portability to the states, SBC offers the following language; Section 251(e)(2) of the Telecommunications Act of 1996 states that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission." As we have described in our discussion of costs that are allocable and recoverable, Type I and Type II number portability costs are new costs that are being incurred solely to facilitate the introduction of facilities-based competition in the local exchange.

We conclude that in order to ensure a seamless telecommunications network that has fully deployed number portability, we have been granted authority via Sections 251(b)(2) and 251(e)(2). As we explained in the First Report and Order, this national deployment policy is amply justified under the express terms of the 1996 Telecommunications Act and in the record. We are authorized to "determine," therefore, a method of cost recovery for all jurisdictions, both interstate and intrastate.

However, although the expenditure of significant costs will be required to complete interstate calls and the calls of CMRS providers (as N-1 carriers), we conclude that some portion of number portability costs are intrastate in nature.

"Therefore, we conclude that the States are required to allocate Type I number portability costs among all telecommunications carriers in a State based upon retail telecommunications revenues and to permit telecommunications carriers to recover intrastate Type I and Type II costs. We conclude that in order to provide competitive neutrality, that portion of carriers' Type I and Type II costs assigned to the States shall be recovered through newly established rate elements. We leave it to the States and the industry to determine which newly established rate elements are most appropriate for cost recovery. We require new rate elements in part to eliminate the prospect that number portability costs will be recovered through carrier access charges or implicitly through existing intrastate charges. However, we require States to conclude the proceedings necessary to establish number portability cost recovery mechanisms by no later than January 1, 1998."

SBC also indicated that allocation of Type I costs on the basis of retail revenues is an acceptable allocation scheme.

The SBC representatives also presented a synopsis (attachment) of the various regulatory plans in effect in each of the seven SBC states. As discussed in the meeting, the common theme in each of the seven regulatory plans is the opportunity to establish new rate elements. SBC advocates establishing new rate elements for the recovery of long-term number portability costs.

Please include this letter and the attachments in the record of these proceedings in accordance with Section 1.1206(a)(1) of the Commission's Rules.

Acknowledgment and date of receipt of this transmittal are requested. A duplicate transmittal letter is attached concerning this matter.

Respectfully submitted,

Attachments

State LNP Cost Recovery Concerns

- States in SBC/Pacific/Nevada territories do not have a mechanism to recover LNP costs through existing service rates.
- State statutes and regulatory rules do not permit rate increases on existing services that will adequately allow LNP cost recovery.
-State regulators are expecting the FCC to determine how LNP costs will be recovered.
-Deferral of LNP cost recovery to the state jurisdictions could put SWBT in a statutory and regulatory "Catch 22."
- If the FCC defers any LNP cost recovery to the states, the FCC must provide clear and concise guidelines on the methods to be employed by the states to implement full LNP cost recovery.
- Because of existing state statutes, many states may not have a viable cost recovery method unless the FCC declares LNP to be a mandatory new service applying to all customers.

State LNP Cost Recovery Concerns

Arkansas

Current Regulation and State Statutes

- Price Cap Regulation
- Local Exchange Service and Access Services rates frozen until 2-4-2000
- No method to increase existing rates to recover LNP costs
- There is no "state" ECUL and none is currently permitted
- New services are permitted

What is needed

- Best case, The FCC provide for all LNP cost to be recovered through federal charges
- Next best, The FCC provide clear and direct mandates to the states that LNP is a mandatory new service and costs must be recovered by a competitively neutral charge to customers

State LNP Cost Recovery Concerns

California

Current Regulation and State Statutes

- All Local Exchange Services rates are capped
- Price Caps on Access Services
- No method to increase existing rates to recover LNP costs
- There is no "state" ECUL and none is currently permitted
- New services are permitted

What is needed

- Best case, The FCC provide for all LNP cost to be recovered through federal charges
- Next best, The FCC provide clear and direct mandates to the states that LNP costs must be recovered from a competitively neutral surcharge applying to all customers

State LNP Cost Recovery Concerns

Kansas

Current Regulation and State Statutes

- Price Cap Regulation
- Under Price Cap Residence and Single Line Business local exchange rates capped until 1-1-2000
- Statutes require SWBT to move Access rates to parity with federal rates
- Very limited method to increase existing rates to recover LNP costs
- There is no "state" ECUL but there is a state USF assessment
- New services are permitted

What is needed

- Best case, The FCC provide for all LNP costs to be recovered through federal charges
- Next best, The FCC provide clear and direct mandates to the states that LNP is a mandatory new service and costs must be recovered by a competitively neutral charge to customers
- Kansas does have the ability to raise rates if LNP is declared an "exogenous" cost factor

State LNP Cost Recovery Concerns

Missouri

Current Regulation and State Statutes

- Rate of Return Regulation (ROR) but Price Cap regulation pending
- Under ROR no "single issue" ratemaking permitted, therefore no rate increases allowed just for LNP cost recovery
- Under Price Cap no rate increases permitted on Local Exchange Service and Access Service until 1-1-2000 and no increases permitted on other services until 1-1-1999
- No method to increase existing rates to recover LNP costs
- There is no "state" ECUL and none is currently permitted
- New services are permitted

What is needed

- Best case, The FCC provide for all LNP costs to be recovered through federal charges
- Next best, The FCC provide clear and direct mandates to the states that LNP is a mandatory new service and costs must be recovered by a competitively neutral charge to customers

State LNP Cost Recovery Concerns

Nevada

Current Regulation and State Statutes

- Price Cap Regulation
- All Basic Local Exchange service capped
- Access Service rates in parity with interstate rates
- No method to increase existing rates to recover LNP costs
- There is no "state" ECUL and none is currently permitted
- New services are permitted

What is needed

- Best case, The FCC provide for all LNP cost to be recovered through federal charges
- Next best, The FCC provide clear and direct mandates to the states that LNP costs must be recovered by a competitively neutral surcharge to customers

State LNP Cost Recovery Concerns

Oklahoma

Current Regulation and State Statutes

- Rate of Return Regulation (ROR) but cannot conduct a rate of return proceeding before 2-5-2001
- Under ROR no "single issue" ratemaking permitted, therefore no rate increases allowed just for LNP cost recovery
- Local rates are frozen
-Access rates must be in parity with interstate (or less)
- No method to increase existing rates to recover LNP costs
- There is no "state" ECUL and none is currently permitted
- New services are permitted

What is needed

- Best case, The FCC provide for all LNP costs to be recovered through federal charges
- Next best, The FCC provide clear and direct mandates to the states that LNP is a mandatory new service and costs must be recovered by a competitively neutral charge to customers
- Oklahoma does have a Universal Service Fund that could provide a competitively neutral mechanism to recover LNP cost if directed by the FCC

State LNP Cost Recovery Concerns

Texas

Current Regulation and State Statutes

- Price Caps on all Local Exchange Services (no rate increases until 1999)
- Price Caps on Access Services (no rate increases until 1999)
- Minimal increases to discretionary services permitted
  (Only allowed after numerous criteria are met)
- No method to increase existing rates to recover LNP costs
- There is no "state" ECUL and none is currently permitted
- New services are permitted

What is needed

- Best case, The FCC provide for all LNP cost to be recovered through federal charges
- Next best, The FCC provide clear and direct mandates to the states that LNP is a mandatory new service and costs must be recovered by a competitively neutral charge to customers